IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Application No.1333 of 2006
IN
First Appeal No.652 of 1997

B. Moosa Hussain Haji. .. .. Applicant
(Orig. Defendant)

v/s.

Mohd. Mohidin Kutty (since deceased through Legal heirs)

Ayshabi w/o, Mohammed M. Kutty & ors. .. Respondents

Ms.Nisha Valani for Applicant.

Mr.P.K. Vyas for Respondents.

CORAM : SMT.ROSHAN DALVI, J.

Dated : 21st June, 2007

P.C. :

1. There is a dispute between the Applicant- Appellant and Respondent No.10 with regard to the carrying on business. The Suit in the trial Court has been dismissed on 30.4.1997. This Appeal has been admitted in 1997. Pending the Suit, Respondent No.10 had paid Rs.50,000/- to the Applicant at

the rate of Rs.2,000/- per month for the period between March 1995 and April 1997. The Applicant had undertaken to return the said amount, if the suits were decided against him. He has been directed to refund that amount to Respondent No.10. There has been a stay of that order. Thereafter this Appeal has been filed. That amount has not been refunded. The refund remains stayed. After the filing of the Appeal, no application has been made from 1997 until 17.2.2006 for deposit of Rs.2,000/- , pending the Appeal. The amount between 1997 and 2006 is not deposited.

2. Without considering the merits of the matter that sum cannot be directed to be deposited for the past period arbitrarily.

3. The Appeal is of 1997. It will be taken up for hearing in the normal course along with the 1997 Appeals. Under these circumstances, pending the Appeal, no order for deposit is being made. There shall be no order on this Civil Application.

(ROSHAN DALVI, J.)